

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SUSANA A. GONZALES  
Deputy Attorney General  
4 State Bar No. 253027  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2221  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2012-18*

13 **KELLY NEKOLA, a.k.a. KELLY JOLEE**  
14 **NEKOLA**  
7735 Erin Court  
Lincoln, NE 68507  
Registered Nurse License No. 714939

**ACCUSATION**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about October 31, 2007, the Board of Registered Nursing issued Registered  
23 Nurse License Number 714939 to Kelly Nekola, also known as Kelly Jolee Nekola (Respondent).  
24 The Registered Nurse License expired on March 31, 2011, and has not been renewed.  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

9  
0  
1  
2  
3  
4  
5  
6  
7  
8

0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6  
7  
8

3  
4  
5  
6  
7  
8

4  
5  
6  
7  
8

DRUGS

8. Code section 4021 states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

9. Code section 4022 provides:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in humans or animals, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only’ or words of similar import.

“(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_,’ ‘Rx only,’ or words of similar import . . .

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

10. “Xanax” is a Section IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug within the meaning of Code section 4022. Xanax is the brand name for the controlled substance, Alprazolam (a benzodiazepam derivative). Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety.

11. “Oxycodone” is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and a dangerous drug within the meaning of Code section 4022. Oxycodone is a semi synthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused.

12. “Zolpidem,” also know by the brand name Ambien, is a short-acting nonbenzodiazepine hypnotic indicated for the short-term treatment of insomnia. Ambien is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(32), and a dangerous drug within the meaning of Code section 4022.

13. "Adipex" is a brand name for Phentermine, a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (f)(4), and a dangerous drug within the meaning of Code section 4022. It is a stimulant.

14. "Ultram," a trade name for Tramadol Hydrochloride, is a centrally acting synthetic analgesic compound. It is a dangerous drug within the meaning of Code section 4022. Ultram is indicated for the management of moderate to moderately severe pain.

## COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Out of State Discipline)  
(Bus. & Prof. Code § 2761, subd. (a)(4))

16. Respondent has subjected her registered nurse license to disciplinary action under Code section 2761, subdivision (a)(4), in that on or about March 31, 2010, in a disciplinary action before the State of Nebraska Department of Health and Human Services, Division of Public Health (Department), the Department entered an Order adopting the Agreed Settlement between Respondent and the Department. The Agreed Settlement was incorporated into the Order, and the facts set out in the Petition: Disciplinary Action and Temporary License Suspension (Petition) were taken as true and adopted by the Order. The Petition was filed by the Department on December 21, 2009. On or about December 21, 2009, the Board entered an Order for Temporary License Suspension.

17. The Agreed Settlement between Respondent and the Department reinstated Respondent's Nebraska registered nurse license and placed her on probation for five years under various conditions. The conditions of Respondent's five year probation required her to:

(1) abstain from the use of alcohol and products or medication containing alcohol including but not limited to mouthwash and over-the-counter medications, unless prescribed by a physician;

(2) abstain from the use of controlled substances, prescription drugs, and all mood altering substances, unless prescribed for or administered to Respondent by a licensed physician or authorized licensed practitioner for a diagnosed medical condition; (3) submit to random body fluid or chemical testing at her expense and at such time and place as the Department may direct; (4) report the use of any controlled substances, prescription drugs, or mood altering substances to the Department; (5) advise all personal treating physicians and other treating practitioners of her history of chemical dependency and abuse and of all medications she is taking at the time of treatment; (6) comply with all of the aftercare treatment recommendations of her chemical dependency treatment provider, including any recommendations for counseling and attendance at support group meetings; (7) maintain a sponsor; (8) attend a minimum of two Alcoholic Anonymous, Narcotics Anonymous, or other chemical dependency support group meetings per week during the first two years of probation, and after two years she may reduce the number of weekly meetings upon the written recommendation of her counselor or treatment provider; (9) not provide nursing services for staffing agencies or in-home healthcare; (10) notify all employers and the licensing authority in any state where she has or obtains a registered nurse license of the Department's disciplinary action; (11) notify the Department within seven days of any change in employment, employment status, residence, or telephone; (12) promptly respond to all requests and inquiries by the Department concerning Respondent's compliance with probation; (13) obey all state and federal laws and the rules and regulations regarding the practice of nursing; (14) appear at meetings of the Nebraska Board of Nursing when requested; (15) practice a minimum of 3,130 hours during the five year probationary period; (16) not practice in a party state to the Nurse Licensure Compact without prior written authorization from both the Department and the party state where Respondent wishes to practice; (17) immediately deliver her original license to the Department so that the Department may issue a license marked "probationary"; (18) be employed as a nurse only by an employer who provides employer quarterly reports to the Department; (19) continue counseling and comply with all treatment recommendations, including all medication recommendations; and (20) submit quarterly reports from her counselor.

1 18. The underlying conduct supporting the Department's disciplinary action is that on or  
2 about August 18, 2009, Respondent was employed as a travelling nurse at Nebraska Medical  
3 Center (N.M.C.). On or about August 18, 2009, two operating room staff members reported that  
4 during a procedure Respondent appeared to be falling asleep, her speech was slurred, and she did  
5 not seem to mentally track when addressed. Respondent admitted that she took 0.5 milligrams of  
6 Xanax prior to the procedure. Respondent's nurse traveler contract with N.M.C. was terminated.  
7 Respondent failed to report this termination to the Department.

8 19. Furthermore, from on or about January 23, 2009, through November 25, 2009,  
9 Respondent was receiving overlapping prescriptions from eight different physicians or advance  
10 practice nurses for the following drugs: Oxycodone, Ambien, Alprazolam, Phentermine, Ambien  
11 CR, Tramadol, and Hydrocodone. These prescriptions were filled at three different pharmacies.  
12 From on or about January 23, 2009, through November 25, 2009, seven of these eight physicians  
13 wrote Respondent prescriptions for Oxycodone, Hydrocodone, or Tramadol. Dr. R.C., who  
14 Respondent later married, wrote Respondent four prescriptions for Alprazolam, one prescription  
15 for Ambien, four prescriptions for Phentermine, and seventeen prescriptions for Oxycodone. On  
16 or about November 2, 2009, Respondent was evaluated by the Nebraska License Assistance  
17 Program (N.L.A.P.), and was given a diagnostic impression of Opioid Dependence. N.L.A.P.  
18 recommended that Respondent complete an inpatient treatment program for chemical dependency  
19 that would include medical management of detoxification, following all continuing care  
20 recommendations made by N.L.A.P. for one year, and returning for reassessment of substance  
21 abuse and treatment needs after one year of treatment. Respondent told N.L.A.P. that she  
22 understood the recommendations but she failed to commit to completing the recommendations.

#### 23 DISCIPLINARY CONSIDERATIONS

24 20. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about April 1, 2005, in a prior criminal proceeding entitled *The*  
26 *State of Arizona v. Kelly J. Nekola*, Scottsdale City Court Case Number M-7510TR-200435904,  
27 Respondent was convicted by guilty plea of violating Arizona Revised Statutes 28-1381 A  
28 (driving a motor vehicle while under the influence of intoxicating liquor, toxic vapors, or drugs

1 and with a blood alcohol content of .15% or higher), a misdemeanor. The record of the criminal  
2 proceeding is incorporated as if fully set forth. Furthermore, on or about April 6, 2005, in a prior  
3 criminal proceeding entitled *The State of Arizona v. Kelly Jolee Nekola*, Tempe Municipal Court  
4 Case Number 05-81066-1, Respondent was convicted by guilty plea of one count of violating  
5 Arizona Revised Statutes 28-1381 A (driving a motor vehicle while under the influence of  
6 intoxicating liquor, toxic vapors, or drugs), a misdemeanor. The record of the criminal  
7 proceeding is incorporated as if fully set forth.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
10 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Revoking or suspending Registered Nurse License Number 714939, issued to Kelly  
12 Nekola, also known as Kelly Jolee Nekola;
  - 13 2. Ordering Kelly Nekola, also known as Kelly Jolee Nekola, to pay the Board of  
14 Registered Nursing the reasonable costs of the investigation and enforcement of this case,  
15 pursuant to Business and Professions Code section 125.3;
  - 16 3. Taking such other and further action as deemed necessary and proper.
- 17  
18

19 DATED: July 12, 2011

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

24 SF2011900267  
25 90198063.doc  
26  
27  
28